

EXHIBIT 2

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

SUVERINO FRITH et al, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

WHOLE FOODS MARKET, INC.

Defendants.

Case No. _____

**AFFIDAVIT OF SAVANNAH KINZER IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

I, Savannah Kinzer, hereby declare:

1. I have personal knowledge of the facts set forth in this affidavit and could and would testify competently to them.
2. I began working as an employee for Whole Foods at 340 River Street in Cambridge, Massachusetts, in approximately April 2020.
3. I am white.
4. Due to the onset of the COVID-19 pandemic, Whole Foods has required all its employees wear a mask to work.
5. Following the death of George Floyd and demonstrations springing up across the country in support of the Black Lives Matter movement, I heard that Whole Foods workers in Seattle, Washington, and Bedford, New Hampshire, had begun wearing Black Lives Matter masks to work at Whole Foods and had been sent home.

6. In solidarity with these workers, I decided to participate and organize co-workers at my Cambridge Whole Foods location to wear the Black Lives Matter masks.
7. I bought 35 Black Lives Matter masks on Etsy and hand made an additional 50 Black Lives Matter masks and distributed them to co-workers.
8. On June 24, 2020, twelve of my co-workers and I put on Black Lives Matter masks, in solidarity with the movement, to show support for our Black coworkers, and to oppose discrimination faced by our Black coworkers.
9. In response, many of us were spoken to by management and told we were in violation of the dress code and got sent home.
10. The next day, thirteen people again wore Black Lives Matter masks to work and were sent home for being in violation of the dress code.
11. The protest grew and by June 30, 2020, approximately twenty-five Whole Foods employees, including myself, showed up to work wearing the Black Lives Matter masks and were told to go home.
12. Each time we were sent home, we were not paid for the rest of our shifts.
13. Our store management told us that store-level managers had no discretion over the decision and that the policy not to allow employees to wear Black Lives Matter masks came from above.
14. I was surprised and disappointed by Whole Foods disciplining and retaliating against us for wearing the masks. I expected that Whole Foods would support us in wearing the Black Lives Matter masks because the company claims to be inclusive and support all of its employees and has publicly supported the movement, including matching employee donations to organizations supporting

Black Lives Matter and publicly stating it has donated to twelve Black Lives Matter organizations.

15. Whole Foods claims that the Black Lives Matter masks violate the dress code policy, which nominally prohibits employees from wearing clothing or apparel with visible slogans, messages, logos, or advertising that are not company-related.
16. However, Whole Foods has not consistently enforced this policy. I have worn various clothes and accessories with logos, such as a mask that reads "Soup is Good", which I wore for a week just before the protests started, without being disciplined at all.
17. On other occasions, I have been spoken to for violating the dress code due to wearing, for example, bike shorts or ripped jeans, but have never been told to go home for these violations and had not previously received any discipline for violating the dress code.
18. I have also observed other employees violating the dress code without any repercussion, including by wearing apparel bearing various logos, such as those of local sports teams, as well as apparel with other messages and slogans, including political messages. Employees have commonly worn Pride flags in support of their LGBTQ+ coworkers without being disciplined. Another employee at my store wore a pin that read "Lock Him Up".
19. I believe that Whole Foods is selectively enforcing its dress code to discipline employees for wearing Black Lives Matter masks.
20. When my co-workers and I wore the Black Lives Matter mask, we were sent home without pay and received a disciplinary "point."

21. We were told that employees would be terminated after receiving a certain number of “points”. However, it has not been made completely clear to us how many points we have.
22. I was sent home without pay for wearing a Black Lives Matter mask a number of times. I wore the mask to nearly every shift I was scheduled to work from June 24, 2020, through July 9, 2020, and was disciplined and sent home without pay nearly every time.
23. I have been a leader in organizing employees to wear the Black Lives Matter masks at work and also to protest Whole Foods’ policy. Employees, together with many community members and elected officials, have been holding protests outside Whole Foods stores to protest the policy and discipline of employees for wearing Black Lives Matter masks.
24. I continued to wear my Black Lives Matter mask at work to show support for my Black coworkers and to protest against Whole Foods’ discriminatory and retaliatory policy of selectively enforcing its dress code in prohibiting employees from wearing Black Lives Matter masks.
25. As a result of the disciplinary points I accumulated for wearing a Black Lives Matter mask, I received a “final warning” when I was marked one day for being a “no call-no show” (I had scheduled time off but forgot to get someone to cover my shift). I also received a point for wearing a Black Lives Matter mask the same day I received the final warning. Because we are allowed four more points after receiving a “final warning”, I was under the impression that I had three more points to go before I would be at risk for being fired.

26. Other than the points I received for wearing the Black Lives Matter mask, and the warning I received for being marked as a “no call-no show” that day, I was not aware of having received any other discipline at Whole Foods.

27. On July 18, 2020, I arrived late to work due to a problem with my bicycle. On other occasions when I was late, I did not receive disciplinary points.

28. That morning, I told my manager that I had filed a charge of discrimination and retaliation with the Equal Employment Opportunity Commission (EEOC), I as well as a charge with the National Labor Relations Board (NLRB), against Whole Foods for prohibiting employees from wearing Black Lives Matter masks and discriminating against and retaliating against employees based on this policy. I gave my manager a copy of the charges.

29. About an hour after I met with the manager, he pulled me aside and told me I was fired. I asked if I could say good-bye to my co-workers, and he told me that I could not. I was escorted out of the store.

30. Now that I am unemployed, I am scared and do not know how I will be able to afford my rent.

31. I want to continue to work at Whole Foods and be allowed to show support for my Black co-workers by wearing a Black Lives Matter mask at work.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 19, 2020,



Savannah Kinzer